

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

State of Ohio,

Plaintiff,

v.

Case No. 1:19cv837

Charles Horton,

Judge Michael R. Barrett

Defendant.

**ORDER**

This matter is before the Court on the Report and Recommendation (“R&R”) filed by the Magistrate Judge on October 9, 2019 (Doc. 4).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the R&R in a timely manner. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). No objections have been filed.

Upon review, the R&R will be adopted in part. Specifically, the R&R is adopted to the extent it determines that this Court lacks subject matter jurisdiction over the criminal action(s) removed. It is rejected, however, to the extent it recommends dismissing the case with prejudice, because the proper procedure is to remand an erroneously-removed prosecution to the state court from which it was removed. See 28 U.S.C. § 1455(b)(4) (“If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for

summary remand.”).<sup>1</sup>

Accordingly, the R&R (Doc. 4) is **ADOPTED IN PART**, and this case is **REMANDED** to the state court from which it was removed for lack of subject matter jurisdiction. Based on his pattern of filing three frivolous notices of removal, which is well-detailed by the Magistrate Judge, Defendant is **ADMONISHED**, in the strongest possible terms, that the Court likely will impose a monetary sanction against him if he again attempts to improperly remove a civil or criminal action from state court to federal court. Finally, pursuant to 28 U.S.C. § 1915(a)(3), the Court certifies that an appeal of this Order would not be taken in good faith.

**IT IS SO ORDERED.**

/s/ Michael R. Barrett  
Michael R. Barrett, Judge  
United States District Court

---

<sup>1</sup> The procedure is the same when a civil action is erroneously removed. See 28 U.S.C. § 1447(c) (“If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”).